

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

THOMAS S. PURSER,

Plaintiff,

vs.

No. CIV 08-1029 JP/WDS

**MICHAEL J. ASTRUE, Commissioner
of the Social Security Administration,**

Defendant.

ORDER AWARDING ATTORNEY FEES UNDER EAJA

THIS MATTER having come before the Court upon Plaintiff's Motion for Attorney Fees under Equal Access to Justice Act (Doc. # 22) and Plaintiff and Defendant having agreed on the amount due under the Act (Response, Doc. # 24 and Reply, Doc. #25), the Court FINDS that the Motion for Attorney Fees should be granted in the agreed upon amount.

IT IS THEREFORE ORDERED that attorney fees be, and hereby are, awarded under the Equal Access to Justice Act, 28 U.S.C. § 2412(d), payable to Plaintiff in the amount of \$5,613.37. *See Astrue v. Ratliff*, 130 U.S. 2521 (2010) (EAJA fees are paid to the prevailing party, not the attorney).

IT IS FURTHER ORDERED THAT, if Plaintiff's counsel receives attorney fees under both the EAJA and 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

DATED this 19th day of May 2011.



W. DANIEL SCHNEIDER
UNITED STATES MAGISTRATE JUDGE